

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

JOSEPH KENT,

Plaintiff,

v.

POOLTOGETHER, INC.; DHARMA LABS,
INC.; OZONE NETWORKS, INC.;
LEIGHTON CUSACK; KAIN WARWICK;
STANISLAV KULECHOV; DRAGONFLY
DIGITAL MANAGEMENT, LLC;
NASCENT US, LLC; NASCENT LIMITED
PARTNERSHIP; STICHTING MAVEN 11
FUNDS; GALAXY DIGITAL TRADING
HK LIMITED, LP; PARAFI CAPITAL, LP;
and COMPOUND LABS, INC.,

Defendants.

Case No. 21-cv-6025-FB-CLP

**SUPPELEMENTAL DECLARATION OF LEIGHTON CUSACK IN SUPPORT OF
DEFENDANT POOLTOGETHER INC.'S REPLY IN SUPPORT OF MOTION (1) TO
COMPEL ARBITRATION, OR ALTERNATIVELY, (2) TO DISMISS PLAINTIFF'S
SECOND AMENDED COMPLAINT, OR ALTERNATIVELY, (3) TO STRIKE
PLAINTIFF'S CLASS ALLEGATIONS**

SUPPLEMENTAL DECLARATION OF LEIGHTON CUSACK

I, Leighton Cusack, hereby declare as follows:

1. I am over 18 years of age and competent to make this declaration. I have either personal knowledge of the matters set forth in this declaration or I have learned them through reasonable investigation, and if called upon as a witness, I could and would testify competently to them. I am the President and Chief Executive Officer of PoolTogether Inc. which is a role I assumed on September 20, 2019, when PoolTogether Inc. filed its articles of incorporation with the Delaware Secretary of State.

2. Through my role, I am familiar with the ways in which users can interact with the PoolTogether website; the internal systems PoolTogether Inc. utilizes to retain documented activities regarding certain user interactions with the website; and PoolTogether Inc.'s practice of updating the pooltogether.com website and documenting such updates in the document and code repository on PoolTogether Inc.'s GitHub page.

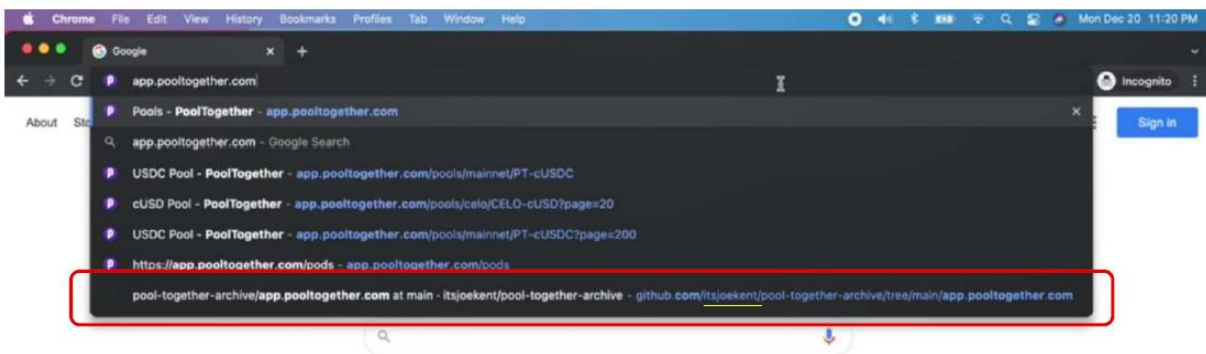
Proof that the Terms Were Live at the Wallet-Connection Step on October 20, 2021 Is Publicly Available on PoolTogether Inc.'s GitHub Page

3. Due to the open-source nature of PoolTogether Inc.'s website, all software code for the website (including the nature and timing of any updates) is available to the public on PoolTogether Inc.'s GitHub page, including the exact update package implemented on October 20, 2021, to present the Terms of Service on the wallet-connection step. This information is available to Plaintiff (or any member of the public) through PoolTogether Inc.'s GitHub repository.

4. I have reviewed the videos sent by Plaintiff's counsel of Plaintiff and his "investigator" interacting with the PoolTogether website. One such video taken by Plaintiff's "investigator" shows the Plaintiff has downloaded the publicly available PoolTogether website code from PoolTogether Inc.'s GitHub page and saved it to his own personal GitHub page. In the

investigator’s video, Plaintiff’s personal GitHub page (Github.com/itsJoeKent) containing the pooltogether.com website content appears in the investigator’s browser history, as shown in the screenshot below. This means Plaintiff copied the publicly available code for the PoolTogether website to his personal and private Github account. Furthermore it shows Plaintiff shared this content via his personal and private Github account with his “investigator”.

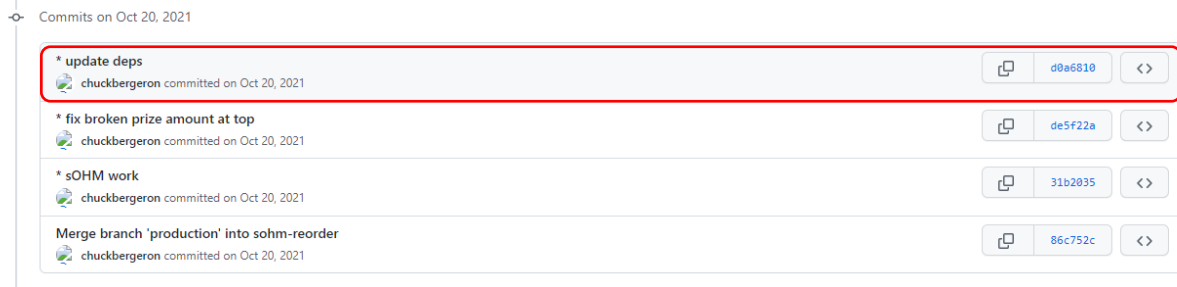
(A true and correct copy of the full screenshot of this video is attached hereto as **Exhibit D.**)



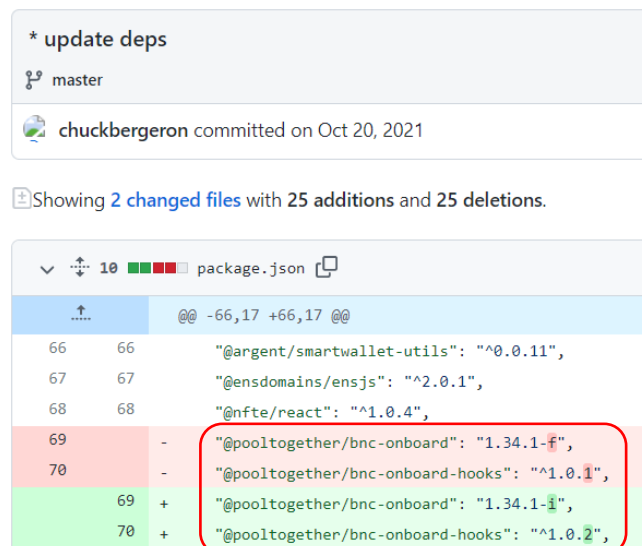
5. Plaintiff (or his counsel) through PoolTogether Inc.’s GitHub page can follow simple steps to confirm that the Terms were live on the wallet-connection step on October 20, 2021. The relevant code repository on PoolTogether Inc.’s GitHub page is the Version 3 repository (the version Plaintiff used during his interactions with the website) and specifically the repository relating to the website’s user interface, or commonly referred to as “UI.” This is available at: github.com/pooltogether/v3-ui. There, Plaintiff can click “commits” in order to see each change made to the website listed in chronological order. github.com/pooltogether/v3-ui/commits/master.

6. As I explained in my prior declaration, this particular change occurred on October 20, 2021, so it is just a matter of scrolling down to that date and looking at the changes, as shown

by the screenshot below.



7. Clicking on the first-listed update that day—“update deps” (highlighted in red above)—takes the browser to the details of this update, which includes the package for “BNC Onboard” (“BNC” stands for “blocknative connect”), which is the package of code that provides for connecting a wallet. The screenshot below shows that this package was updated from “1.34.1-*f*” to “1.34.1-*i*” (highlighted in red below).



8. Downloading and opening this package shows that the update package implemented on October 20, 2021 (the “BNC Onboarding” package), included the Terms of Service language at the wallet-connection step, as I asserted in my prior declaration. A screenshot of this is depicted below. Plaintiff (or his counsel) can follow these steps to confirm the timing of

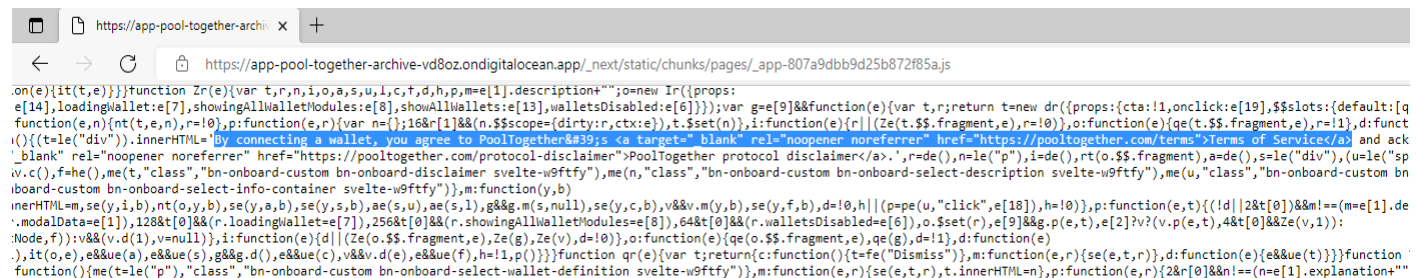
the Terms of Service update. The onboard package can be downloaded here <https://www.npmjs.com/package/@pooltogether/bnc-onboard>

A screenshot of the Visual Studio Code editor interface. The top bar shows the file name "onboard-eдебbd7e.js" and the extension ".js". The left sidebar contains icons for Explorer, Search, Source Control, Run and Debug, Extensions, and Settings. The main editor area displays JavaScript code for creating a wallet. Line 5778 is highlighted in blue, containing HTML markup for terms of service and disclaimer links. The status bar at the bottom shows system metrics (CPU, memory, disk) and application settings (Spaces: 2, UTF-8 encoding, LF line endings, Java Script language, Prettier formatter).

```
JS onboard-eдебbd7e.js ×
dist > cjs > JS onboard-eдебbd7e.js > create_if_block_1$3 > c
5777 /*showWalletDefinition*/
5778 ctx[2] && create_if_block_2$1(ctx);
5779 return {
5780   c: function c() {
5781     div0 = element("div");
5782     div0.innerHTML = "By connecting a wallet, you agree to PoolTogether#39;s <a target=\"_blank\"
rel=\"noopener noreferrer\" href=\"https://pooltogether.com/terms/>Terms of Service</a> and
acknowledge that you have read and understand the\n - - - - -<a target=\"_blank\" rel=\"noopener
noreferrer\" href=\"https://pooltogether.com/protocol-disclaimer/>PoolTogether protocol
disclaimer</a>.";
5783     t5 = space();
5784     _p = element("p");
5785     t6 = space();
5786     create_component(wallets.$$.fragment);
5787     t7 = space();
5788     div1 = element("div");
5789     span = element("span");
5790     span.textContent = "What is a wallet?";
5791     t9 = space();
5792     if (if_block0) if_block0.c();
5793     t10 = space();
```

9. **Second Method to Confirm Terms.** There is also a second method for Plaintiff to confirm these facts. PoolTogether Inc.'s records confirm that Plaintiff has interacted with the PoolTogether website code through an additional URL hosted on DigitalOcean (a website hosting provider). In other words, in addition to Plaintiff downloading the website code from PoolTogether Inc.'s GitHub page, someone (presumably the Plaintiff) also hosted their own version of the PoolTogether website at the following URL: app-pool-together-archive-vd8oz.ondigitalocean.app/. I know that Plaintiff has accessed this website at this URL because the interactions registered several errors on PoolTogether Inc.'s error tracking system with Plaintiff's IP address. (Despite the fact that this "duplicate" PoolTogether website is hosted on a different server through DigitalOcean, because the code was copied from PoolTogether Inc.'s GitHub, the errors still register on PoolTogether Inc.'s error tracking system.)

10. That “duplicate” version provides another source that confirms that the Terms of Service were live on the wallet-connection step on the day Plaintiff made his deposit (October 21, 2021). Plaintiff (or his counsel) can simply view the details of the code at the following URL: https://app-pool-together-archive-vd8oz.ondigitalocean.app/_next/static/chunks/pages/_app-807a9dbb9d25b872f85a.js. At that URL, Plaintiff can then perform a search function in the browser (*e.g.*, control “f”) for relevant terms, *e.g.*, “By connecting a wallet,” which will present the following webpage showing the wallet-connection step code, confirming that the version with which Plaintiff interacted on October 21, 2021, contained the Terms of Service at the wallet-connection step.

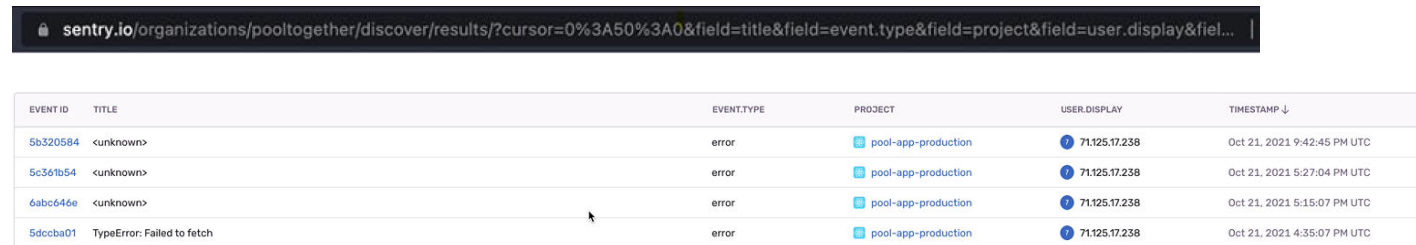


Plaintiff Interacted with the Website At Least Four Times on October 21, 2021, Before Making His Ultimate Deposit at Around Midnight that Evening

11. I have reviewed Plaintiff’s opposition brief to PoolTogether Inc.’s motion to compel arbitration. I understand that he does not deny that he interacted with the PoolTogether website at around noon on October 21, 2021 (12:35 pm ET), before making his ultimate deposit close to midnight that evening (11:43 pm ET).

12. PoolTogether Inc.’s system confirms that Plaintiff also interacted with the deposit page at 1:15 pm ET, 1:27 pm ET, and 5:42 pm ET, as reflected in the screenshot of associated log entries from the Sentry dashboard for Plaintiff’s IP address below. As the below graphic shows, on at least four separate occasions that day the Plaintiff visited the deposit page without successfully making a deposit. This is due at least in part because Plaintiff’s wallet had an invalid

connection and therefore a deposit was impossible without first disconnecting and then connecting a wallet again. The “fail-to-fetch” error at 12:35 pm ET (4:35 pm UTC) definitively shows this. Thus, it is not relevant that he may not have encountered the fail-to-fetch wallet error at 11:43 pm ET since he demonstrably did encounter it earlier in the day.



EVENT ID	TITLE	EVENT TYPE	PROJECT	USER DISPLAY	TIMESTAMP ↓
5b320584	<unknown>	error	pool-app-production	71.125.17.238	Oct 21, 2021 9:42:45 PM UTC
5c361b54	<unknown>	error	pool-app-production	71.125.17.238	Oct 21, 2021 5:27:04 PM UTC
6abc646e	<unknown>	error	pool-app-production	71.125.17.238	Oct 21, 2021 5:15:07 PM UTC
5dccb01	TypeError: Failed to fetch	error	pool-app-production	71.125.17.238	Oct 21, 2021 4:35:07 PM UTC

13. To clarify, the fact that a wallet address is sometimes automatically displayed when a user returns to the website **does not** mean the wallet is properly connected. This is conclusively shown in the video provided by Plaintiff of his investigator visiting the website, seeing his wallet address displayed when returning to the website yet encountering an error when attempting his deposit. This error requires a new wallet connection.

I Did Not Submit False Information on PoolTogether Inc.’s Corporate Filings

14. I understand that Plaintiff questions my credibility by claiming that I falsely listed my mother’s house as PoolTogether Inc.’s principal place of business. This is not true. The document to which Plaintiff refers (“California Statement and Designation by Foreign Corporation”) is dated October 25, 2019. At that time, I was living and working out of a van, often in Michigan (close to my mother’s house). The van, in turn, was registered to my mother’s house in Michigan. Because I did not have any other permanent address, and because I was working out of my van, I listed my mother’s address (where the van was registered) as my company address, which is where I received mail at the time. (True and correct copies of my Twitter posts showing that I launched and operated the PoolTogether website from my van at this time are attached hereto as **Exhibit E**.) Although I did rent an apartment in New York in July of 2020, due to the COVID-

19 pandemic, I anticipated continuing to spend substantial amounts of time at my mother's address and so retained the Michigan address to ensure no important mail or similar communications were overlooked.

Plaintiff Would Have Accrued 0.00 GUSD Had He Deposited His 10 GUSD on the Aave Protocol from October 21 to October 28, 2021

15. The GUSD pool on the PoolTogether savings protocol routes user deposits to a liquidity protocol called Aave (another decentralized application on the Ethereum blockchain) where the deposit can earn a yield according to the GUSD smart contract on the Aave protocol.

16. According to Aavescan (aavescan.com), a website that publishes historical rates for the Aave protocol, a GUSD deposit on the Aave protocol between October 21 and October 28, 2021, would range between 1.6% APY on the low end to 1.75% APY on the high end. (True and correct copies of the Aavescan webpages for GUSD APY rates on Aave on these dates are attached hereto as **Exhibit F.**)


17. The Aave GitHub page regarding the GUSD smart contract for the Aave protocol also provides some additional details relating to the accrual of interest for GUSD on the Aave protocol. It notes: "The GUSD smart contract only supports 2 decimals meaning that interest accrual can only occur for more than 1 cent." (A true and correct copy of the Aave GitHub page for the GUSD smart contract is attached hereto as **Exhibit G.**)

18. I have inputted the 1.75% APY historical rate for the Aave protocol between October 21 and October 28, 2021 into an online daily compound interest calculator (thecalculatorsite.com). It confirms that a 10 GUSD deposit on October 21, 2021, with a 1.75% APY would result in 0.00 GUSD in interest once withdrawn on October 28, 2021. (A true and correct copy of the results from this calculation is attached hereto as **Exhibit H.**)

Percentage Amounts Deposited on the PoolTogether Savings Protocol Attributable To POOL Token Holders

19. The vast majority of the amounts deposited through the PoolTogether savings protocol are attributable to POOL tokenholders. Moreover, that information is easily confirmed through publicly available blockchain data. (The blockchain acts as a ledger of all transactions involving the protocol.) For example, based on a review of publicly available blockchain data, at least 67% of the amounts deposited through the PoolTogether savings protocol from October 18-22, 2021, were accrued by wallets that held POOL tokens. While that percentage may vary somewhat from day to day and week to week, in my experience, that is a typical reflection of the amounts deposited among POOL token-holders and non-token-holders. The percentage of interest earned on those deposits would reflect roughly the same distribution among POOL token-holders and non-token-holders.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 17, 2022, in New York City, New York.

By: 
Leighton Cusack